

1 its fiber two blocks south and thereby meet your A
2 to B route, and in that way connect that WorldCom
3 node to either your office A or your office B.

4 MS. DETCH: So, are you looking for access
5 to subloop dark fiber?

6 MR. GANSERT: What you're asking is, can
7 you construct a joint project with us, can you go
8 to our cable and basically what we would call
9 stubbing and branch it?

10 MS. DETCH: What would help me is if you
11 can draw on that white board. I don't understand
12 what the third fiber route is you are trying to
13 tell me.

14 MR. FREIFELD: I should have handed it to
15 you this morning. I gave it to counsel last night.
16 It's fairly primitive. My artistic abilities
17 are...

18 The point labeled--

19 MR. GANSERT: For point of clarification,
20 at that little T point that you're suggesting, what
21 are you proposing is there?

22 MR. FREIFELD: I'm proposing that that

1 would be a point where WorldCom would bring its
2 fiber to that point and splice into the dark fiber
3 which I have shown as running from one Verizon CO
4 to another.

5 MR. GANSERT: What do you presume that we
6 have there?

7 MR. FREIFELD: Just the cable.

8 MS. DETCH: So, you're looking for Verizon
9 to create a new splice point for WorldCom in order
10 to access fiber? Are you asking if we are going to
11 create a splice point that's not existing?

12 MR. FREIFELD: Almost. I'm asking, would
13 Section 7.2.3 prevent WorldCom from splicing its
14 fiber into this dark fiber at that point?

15 MS. DETCH: 7.2.3 has nothing to do with
16 the scenario you're proposing. 7.2.3 is discussing
17 if Verizon has different cable routes or Verizon
18 will create something to combine its cable routes
19 and create a new route that Verizon doesn't even
20 have placed today.

21 What this diagram appears to be asking is
22 can WorldCom access an existing continuous fiber

1 route at any point in which it would like, whether
2 that means creating a new splice point or not.

3 Now, if in this diagram there is some sort
4 of accessible terminal along this portion of the
5 fiber, that would be subloop dark fiber, and they
6 could access at the accessible terminal, say in a
7 remote terminal, if it was installed there. They
8 would have to establish their co-location there to
9 access it like any other UNE. But we would not
10 create a new splice point in this scenario, nor
11 would we breach open an existing splice point for
12 the reasons that Joe described earlier.

13 MR. GANSERT: Maybe for clarity, it's
14 7.2.2 that prohibits that.

15 MR. FREIFELD: That's the next question.

16 MR. GANSERT: We have been looking at the
17 wrong section. 7.2.2 is what says only at
18 pre-existing hard termination points. That's as
19 far from that as you can get, I guess.

20 MR. FREIFELD: And the point about the
21 hard termination points is basically we could
22 not--a CLEC could not splice into fiber, period?

1 MS. DETCH: I think in the UNE Remand
2 Order, in the definition of "dark fiber," it very
3 clearly defines the access points for that as being
4 an accessible terminal, and it very clearly goes on
5 to say that an accessible terminal is a point in
6 the loop in which a technician can effect
7 cross-connects.

8 So, it's very clear that the FCC in its
9 order has defined points in which both parties can
10 come in and access the fiber, both parties can come
11 in and install whatever equipment they want, and
12 they could go back and perform whatever maintenance
13 procedures that they would need on their end of the
14 fiber.

15 MR. FREIFELD: If I'm not mistaken, the
16 Commission defined an accessible terminal as a
17 point in which the fiber can be accessed without
18 breaking open a splice case; is that accurate?

19 MS. DETCH: Correct.

20 MR. FREIFELD: So, if the fiber can be
21 accessed without breaking into an existing splice
22 case, nonetheless your position is that a splice

1 cannot be created at that point?

2 MS. DETCH: Our position is we won't
3 create new splice points on existing cable routes
4 for unbundled dark fiber, and that's consistent
5 with, I think, access to any retail or wholesale
6 service. All services are deployed from some type
7 of accessible terminal. You never deploy a service
8 from a splice point.

9 MR. GANSERT: I think, just to be clear, I
10 think in our minds an accessible terminal is the
11 only other method other than a splice point to
12 access fiber.

13 If you're suggesting there is another
14 method--you seem to be suggesting cutting the cable
15 which I think it's fair to presume that the
16 Commission didn't mean, that rather than accessing
17 a splice point one should cut the cable open. If
18 you grant us that, then what we are saying is,
19 other than accessing a splice point, what is
20 another accessible point? That is what a
21 termination point is.

22 MR. FREIFELD: What I'm asking you is, if

1 the fiber can be accessed without breaking into an
2 existing splice point, and a splice is performed
3 the same way Verizon might do for itself, and then
4 the fiber is encased in a splice case, I'm asking
5 you, would you permit that scenario? I think you
6 answered.

7 MR. GANSERT: No. I think the answer is
8 no.

9 MR. FREIFELD: That's fair enough.

10 Would you take a look at Section 7.2.2.10
11 of the Verizon contract. This section permits
12 Verizon to take back fiber previously provided to
13 CLEC; is that correct?

14 MS. DETCH: Upon showing to the Commission
15 that we have a need, yes. We can't just
16 unilaterally take it back. We have to go forth in
17 front of the state commission, show our case, and
18 the commission would rule whether we could do that
19 or not.

20 MR. FREIFELD: Do you think the existence
21 of such a contract provision, though, allowing the
22 prospect of having fiber taken back after it's been

1 granted, might chill the likelihood of a CLEC even
2 asking for dark fiber in the first place?

3 MS. DETCH: Not at all. I think this is
4 just a basic reservation of rights that we would
5 have probably if it isn't even in the contract. I
6 think we always have the ability to go forth in
7 front of the commission.

8 Now, obviously, this isn't something that
9 we would do at a whim. We would have to have a
10 very strong showing. My guess would be there is
11 absolutely no fiber available and construction
12 would take months that we would have to do
13 something this extreme. This is just a reservation
14 of a right, and we can't do it unilaterally. We
15 would have to go forth and probably have an
16 emergency proceeding in front of a commission.

17 MR. FREIFELD: Would Verizon rely upon a
18 supplier for an important part of their network if
19 the possibility exists of that supplier taking that
20 piece of the network from you?

21 MS. DETCH: I would have no idea.

22 MR. FREIFELD: Would you look at Section

1 7.2.10.3.

2 This section provides that Verizon may
3 reserve dark fiber for itself; is that a fair
4 characterization?

5 MS. DETCH: No. This section--and if you
6 remember, this is the language that the addendum--I
7 don't know the proper word--errata was submitted
8 today and mentioned yesterday. This basically says
9 that fiber is assigned for maintenance purposes or
10 for the near term, the customer orders that we have
11 in place isn't available for unbundled dark fiber,
12 and the customer order could include another
13 customer order for unbundled dark fiber. Once the
14 order has been received, and the customer has FOC'd
15 back a date, then they are assigned the fiber to
16 meet that order. So, that wouldn't be available to
17 us or any other customer.

18 MR. FREIFELD: How would this provision
19 read now?

20 MS. DETCH: Verizon may reserve dark fiber
21 for maintenance purposes or to satisfy customer
22 orders for fiber-related services.

1 MR. FREIFELD: And your point is that that
2 does not constitute a reservation of fiber because
3 of the change you made?

4 MS. DETCH: It's really not a reservation.
5 If the customer has an order in and we FOC'd them
6 back a date, the fiber is assigned to meet that
7 order. The same thing with maintenance fares.
8 Maintenance fares are assigned when cables are
9 installed.

10 MR. FREIFELD: In the WorldCom proposed
11 language proposed to Verizon, WorldCom requested, I
12 think, the right to reserve dark fiber for 10 days.
13 Is that objectionable to Verizon?

14 MS. DETCH: Yes, it is.

15 MR. FREIFELD: Does a 10-day reservation
16 by a CLEC--well, why don't you tell me why.

17 MS. DETCH: Verizon doesn't reserve fiber
18 for itself or other customers, so it wouldn't be a
19 parity with what we do in other lines of business.

20 MR. FREIFELD: Is all of the dark fiber in
21 Verizon's network available to Verizon?

22 MS. DETCH: Any unlit fiber? It's

1 available to any customer first come first serve.

2 MR. GANSERT: Let's call it "terminated
3 dark fiber" is available to Verizon for assignment.

4 MR. FREIFELD: But Verizon doesn't reserve
5 it for itself, but it's available to Verizon; is
6 that a fair characterization?

7 MS. DETCH: But it's available to anybody.
8 It's not reserved. Once an order is placed, it's
9 assigned, whether it's a retail order, wholesale
10 order...

11 MR. FREIFELD: Thank you. That's all the
12 questions I have.

13 MS. FARROBA: Could I ask a clarification
14 question. Earlier, you were talking about a
15 situation where within a splice case you didn't
16 actually, I guess, splice together all of the
17 ribbons. Some of them were cut and not used and
18 are not terminated? I don't know these are the
19 same--mean the same thing, but does that mean that
20 Verizon would never go back into that splice to use
21 those fiber strands that were not--that were cut at
22 that point?

1 MR. GANSERT: Typically, you have two
2 cases where fiber might be left unused. One is
3 where it's a stage project. For example, you are
4 putting in a large, say, feeder type cable, and
5 perhaps you're passing a location where you know
6 that there is a development or something, and you
7 are going to at some point have an RT there fairly
8 soon in a known place. You might what we call
9 "stub" the cable. That is, create the splice point
10 for that--for the first sort of segment of that leg
11 at that time so you don't have to disturb the
12 splice.

13 The other situation is as you're building
14 a cable, a fiber cable, particularly in the loop
15 environment, the cables don't come in every random
16 size, that they come in fairly specific sizes.
17 Predominantly, we use ribbon cable that comes in
18 units of 12.

19 And as you move out from central office,
20 and you pass places where you want to drop off
21 fibers, you dedicate a part of the cable to that
22 location, so let's say--say, as an example, you had

1 a 96 fiber cable, eight ribbons. You come to the
2 first RT on the route, and one of the ribbons is
3 spliced into the route.

4 Now, there isn't any such thing as an 84
5 fiber cable, so the piece of the 96 fiber cable
6 that goes on to the next RT has a piece of fiber in
7 it, a ribbon, that really has no place to go to be
8 terminated. That piece would be permanently lost.
9 We call it, you will hear about this in the cost
10 case, we call it "breakage" usually. It's kind of
11 a misfit in the building of the cable.

12 Same thing happens in "carpet" cable where
13 the sizes don't perfectly fit. So those pieces
14 would never be intended to be used. They would
15 just be spliced.

16 MS. FARROBA: You would never open up the
17 splice case again?

18 MR. GANSERT: No. You never say never
19 other than for maintenance purpose, the purpose
20 where for failure or for whatever reason you had to
21 do it, but not as a planned way to use the fiber.

22 If you're planning to use it, you would

1 position the splice so you could do it without
2 disturbing the splice.

3 MS. FARROBA: So, that would create
4 stranded costs of the breakage portion of the fiber
5 to the extent that you drop off a piece of the
6 fiber along the route?

7 MR. GANSERT: It's one of the things that
8 contributes definitely to fiber utilization, why
9 fiber utilization seems fairly low at times because
10 it's just--it's much cheaper to build
11 standard-sized cables and standard ribbon
12 configurations than it is to constantly be sort of
13 changing the size every few thousand feet.

14 MS. FARROBA: Thanks for the
15 clarification.

16 MR. DYGART: Then we are on to issue
17 IV-18, I think.

18 MR. FREIFELD: That's a WorldCom only
19 issue, and I would propose to ask questions related
20 to IV-18 and IV-21 together. IV-18 is
21 multiplexing, I believe; and IV-21 is dedicated
22 transport. And the two are related in the

1 testimony, I think.

2 MR. DYGART: That's fine.

3 MR. FREIFELD: Thank you.

4 If you would refer to the August 31st
5 additional direct testimony--it's number 23 at this
6 point--at the very bottom of page four, going on to
7 the top of page five, the testimony indicates that
8 multiplexing is a functionality of transport, but
9 that is not a stand-alone UNE.

10 Is that an accurate description of
11 Verizon's position at that point in the testimony?

12 MS. FOX: Yes.

13 MR. FREIFELD: And further in the
14 testimony you indicate circumstances in which
15 Verizon will provide this functionality and
16 circumstances in which it will not; is that also
17 accurate?

18 MS. FOX: Yes.

19 MR. FREIFELD: For example, Verizon's
20 position is that it will not provide multiplexing
21 as a functionality of transport between two UNE
22 transport circuits of different speed.

1 MS. FOX: Yes.

2 MR. FREIFELD: On the other hand, Verizon
3 will provide multiplexing as a functionality of
4 transport in the situation referenced in footnote
5 three of Verizon's August 17th direct testimony as
6 Verizon Exhibit 8. Are you familiar with what I'm
7 referring to there?

8 MS. FOX: Let me check.

9 MR. FREIFELD: It's the August 17th
10 direct, page five, footnote three.

11 MS. FOX: Right. In that footnote we are
12 talking about multiplexing in the middle of the
13 circuit.

14 MR. FREIFELD: Yes, ma'am.

15 MS. FOX: Multiplexing is a functionality
16 unseparable from the transport itself, required to
17 actually provision the transport and required to
18 hand off the designated speed, for example, at each
19 end of the circuit that the CLEC ordered.

20 MR. FREIFELD: As I understand the example
21 in the footnote, I think the point is that
22 Verizon's interoffice network is primarily optical,

1 so in order to provide DS3 transport to a CLEC,
2 Verizon will have to multiplex and demultiplex that
3 signal.

4 MR. GANSERT: That's correct.

5 MR. FREIFELD: So, Verizon will change the
6 transmission speed from OC something to DS3 in that
7 scenario; correct?

8 MR. GANSERT: It will aggregate smaller
9 channels together to put them on a higher speed,
10 more efficient channel. It doesn't really change
11 the speed of the service itself.

12 MR. FREIFELD: It's the aggregation?

13 MR. GANSERT: It's the aggregation.

14 MR. FREIFELD: On the other hand,
15 multiplexing is not a functionality of transport if
16 a CLEC requests that Verizon perform that
17 functionality between a DS1 circuit and a DS3
18 circuit?

19 MS. FOX: That's correct.

20 MR. FREIFELD: All right. Let me ask you
21 to assume a scenario and ask you to comment.

22 Assume that WorldCom orders unbundled transport at

1 a DS1 level from four different Verizon end offices
2 all running to a single tandem, so basically you
3 have four basic DS1 circuits running from four
4 different end offices to a tandem.

5 MR. GANSERT: A Verizon tandem?

6 MR. FREIFELD: Yes, a Verizon tandem.

7 I take it from your prior answers, if
8 Verizon will use multiplexing in order to provide
9 that DS1 transport?

10 MS. FOX: Yeah, most infrastructure would
11 be at a higher level than DS1, but what you have
12 ordered for dedicated transport would be a DS1
13 circuit terminating in co-location arrangements in
14 each of those offices.

15 MR. FREIFELD: I understand.

16 Now, continuing with the same
17 hypothetical, assume WorldCom would like to have
18 the four DS1 signals at that tandem multiplexed
19 into a DS3 signal at the tandem because of the
20 efficiencies of doing so which you indicated in
21 your testimony, and WorldCom would then like to use
22 unbundled transport as a DS3 level from that tandem

1 to a WorldCom point of presence, some WorldCom
2 location, that's the multiplexing that you have
3 indicated will not be provided?

4 MS. FOX: That's correct. That's not
5 something we believe is required by the UNE Remand
6 Order because that would be providing multiple
7 transmission levels over multiple circuits.

8 And to us that would appear to be
9 combination, but a combination that has no direct
10 correlation to an existing service.

11 MR. FREIFELD: Do you think that's a
12 combination of unbundled network elements?

13 MS. FOX: It's a combination of something.

14 MR. FREIFELD: Okay. You mentioned
15 elsewhere in your testimony that Verizon
16 voluntarily does provide two specific types of
17 multiplexing DS3 to 1 and DS1 to 0.

18 What does the reference "to voluntarily
19 provide that multiplexing" mean?

20 MS. FOX: Means we believe we have no
21 obligation to provide it, but we are providing it
22 today.

1 MR. FREIFELD: Does that mean in the
2 scenario we just talked about Verizon would provide
3 that multiplexing voluntarily, but not because you
4 feel you're obligated to?

5 MS. FOX: No. It means that we would
6 provide DS3 to DS1 multiplexing, and DS1 to DS0
7 multiplexing. However, each multiplexing
8 functionality is a stand-alone unit, so that if you
9 were to buy that today, you would come out of your
10 co-location cage at a DS3 level, go into the
11 multiplexing equipment and come back out at a DS1
12 level and go into the same cage in the same serving
13 wire center. That is how that stand-alone
14 multiplexing is sold today.

15 MR. FREIFELD: I'm not sure I follow.
16 When you have a circuit running from the end office
17 to the tandem and then a circuit running from the
18 tandem to a third location, one of them being at a
19 DS1, one of them being at a DS3, is the voluntary
20 offer you refer to, to provide multiplexing as
21 between those two, or no?

22 MS. FOX: No.

1 MR. FREIFELD: Would you describe again
2 for me, please, what the offer is.

3 MS. FOX: The offer is same cage, same
4 serving wire center, you would come out of your
5 cage at a DS3 level, for example, go into a
6 multiplexing equipment, come back out at a DS1
7 level and go back into the same cage in the same
8 office.

9 MR. GANSERT: It's fair to say you could
10 create--what Susan is saying is we won't create the
11 configuration that you have asked for, but we would
12 provide the parts that you could make that
13 configuration. You could create that
14 configuration, but you would have to do the
15 interconnecting through your co-location
16 arrangement at the tandem office.

17 MR. FREIFELD: Maybe we are speaking past
18 one another, but given what you have said you would
19 voluntarily provide, isn't there a leg of transport
20 that constitutes a DS3 which aggregates multiple
21 DS1s through the arrangement you just described?

22 MS. FOX: No. You are combining any DS3

1 transport with that multiplexer yourself within
2 your co-location arrangement.

3 MR. GANSERT: I think the confusion may
4 be--the end result is what you want. The question
5 is are we, as a service, providing the multiplexing
6 function as part of the DS3 leg? I think that's
7 where we were reading what you just asked us, and
8 we said no, we will provide as part of UNES you
9 could get the DS3 leg and you could get the DS1s,
10 and we provide another service that is not a UNE
11 that you could get the multiplexing, and then you
12 in a co-location arrangement could connect those
13 together any way you want, creating the
14 configuration you described.

15 MR. FREIFELD: Maybe I used the word
16 "service." That's probably the hangup. I will try
17 one more time to try to understand.

18 You said you voluntarily provide the
19 multiplexing which permits DS1 circuits to be
20 aggregated to DS3 circuits; am I saying it in a
21 way--

22 MR. GANSERT: In other words, we provide

1 access to an element that can do that function,
2 that's right, or to situation--well, element gets
3 confusing. A "device" that could do that.

4 MR. FREIFELD: Would Verizon include this
5 offer, in whatever terms you care to describe it,
6 in the Interconnection Agreement?

7 MS. FOX: Are you asking if we would
8 include a description of multiplexing as I have
9 described it?

10 MR. FREIFELD: In other words, would you
11 commit to make it available as you described it in
12 the Interconnection Agreement?

13 MS. FOX: Yes.

14 MR. FREIFELD: I think you also mentioned
15 in the testimony that Verizon provides multiplexing
16 as part of a loop transport combination.

17 MS. FOX: That's correct.

18 MR. FREIFELD: In that instance, are you
19 providing multiplexing as a stand-alone UNE?

20 MS. FOX: No.

21 MR. FREIFELD: As part of loop
22 functionality?

1 MS. FOX: We have defined a multiplexor as
2 a transport functionality. And if you purchase
3 that in combination with a loop, that's a loop
4 transport combination, or EEL, and has the
5 accompanying local-use restrictions as defined in
6 the FCC Supplemental Order Clarification.

7 MR. FREIFELD: Hold aside the local-use
8 restrictions. I don't think they are relevant to
9 this question. Assume the CLEC is in compliance
10 with the Supplemental Order Clarification, safe
11 harbors.

12 In that instance, how do you view your
13 provision of multiplexing? Is it part of the
14 functionality of one of the UNES that are being
15 provided?

16 MS. FOX: Are you asking how do we view
17 multiplexing when it's used in combination with the
18 loop? I'm not sure I understood your question, if
19 you could repeat it or rephrase it.

20 MR. FREIFELD: Sure.

21 CLEC orders a loop transport combination,
22 which is in compliance with the Supplemental Order

1 Clarification. You have indicated that you
2 provided multiplexing. I'm just asking you why in
3 that instance you provide multiplexing? How do you
4 view what you're providing there?

5 MS. FOX: We believe that's an EEL.

6 MR. FREIFELD: And multiplexing is a part
7 of an EEL?

8 MS. FOX: Multiplexing satisfies the
9 transport piece of the loop transport.

10 MR. FREIFELD: So, it's part of the loop
11 UNE in that instance?

12 MS. FOX: No.

13 MR. FREIFELD: No?

14 MS. FOX: I'm saying that the loop
15 multiplexer combination, for example, a DS1 loop
16 with a DS3 to 1 multiplexor are a combination of
17 two things. First the loop, the DS1 loop; and
18 second, transport, the multiplexor.

19 And this definition has some routes also
20 in orders issued by previous commissions. The New
21 York Commission, in particular, has addressed this
22 particular issue: What is this combination of

1 things?

2 MR. FREIFELD: All right. Let me direct
3 your attention to footnote three of page five of
4 your August 17th direct testimony. Maybe the same
5 footnote we were discussing before.

6 MS. FARROBA: What exhibit number is that?

7 MR. FREIFELD: Exhibit 8.

8 MS. FARROBA: Verizon Exhibit 8?

9 MR. FREIFELD: Yes.

10 In that footnote you indicate that Verizon
11 will provide the multiplexing in the middle of a
12 circuit which meets the requirements of the UNE
13 Remand Order that Verizon provide technically
14 feasible capacity-related services, including
15 electronics, that are necessary components of the
16 functionality of capacity-related services. And
17 there is a citation to the paragraph 323 of the UNE
18 Remand Order.

19 Can you tell me where in paragraph 323 the
20 Commission limited the obligation to provide all
21 technically feasible capacity-related services,
22 including electronics, that are necessary

1 components of the functionality of capacity-related
2 services to electronics that are located in the
3 middle of the circuit?

4 MR. GARY: Shall I hand her the paragraph
5 323?

6 MS. FOX: Let's read that in conjunction
7 with what it says we have to provide. We have to
8 provide DS1 to DS3 and OC3 to OC96 dedicated
9 transport services.

10 And if in providing that we have to
11 include all intermediate multiplexing that's
12 required in order to provision a DS1 handoff at
13 each end, a DS3 handoff at each end, and OC3
14 handoff at each end, or OC12 handoff at each end,
15 it's only reasonable to read this section as
16 meaning that you must provide the intermediate
17 multiplexing required to provision a dedicated
18 circuit.

19 If you didn't do that, then there could be
20 a possibility that you would take what we believe
21 and what we understand and sell as a dedicated
22 circuit as something that has multiple piece parts

1 and has--would have a much greater cost than what
2 CLECs are paying today for dedicated transport.

3 MR. FREIFELD: So, you don't believe that
4 the reference to providing all technically feasible
5 capacity-related services such as DS1, DS3,
6 includes the multiplexing to multiplex DS1 circuits
7 on to a DS3 circuit?

8 MS. FOX: That's correct.

9 MR. FREIFELD: That's fine. If we could
10 move to another aspect of the dispute regarding the
11 dedicated transport provisions of the
12 Interconnection Agreement.

13 MS. FARROBA: Actually, could I ask a
14 quick question.

15 Do you provide the unbundled dedicated
16 transport facility with the multiplexing in the
17 State of Texas under your Interconnection
18 Agreements in Texas?

19 MS. FOX: I don't know.

20 MS. FARROBA: Would you check, please.

21 Go ahead.

22 MR. FREIFELD: I think this refers to the

1 dispute over language we have regarding providing
2 diverse routing options with respect to dedicated
3 transport.

4 Does Verizon offer diverse routing to
5 customers, upon request, out of your tariff?

6 MS. FOX: Which tariff?

7 MR. FREIFELD: I believe FCC tariff number
8 six.

9 MS. FOX: If you want a diverse route, I
10 believe you can purchase that from the Federal
11 tariffs.

12 MR. FREIFELD: Do you understand that the
13 dispute involving, I think it's Section 10.2.2
14 proposed by WorldCom is a request by WorldCom to be
15 able to order additional diverse routes out of the
16 tariff where UNE facilities would not otherwise be
17 available?

18 MS. FOX: It's my understanding that if
19 you wanted a diverse route, you could order a
20 Second Circuit, and then within your co-location
21 arrangement, take care of whatever you need to in
22 order to make that a diverse route.

1 So, to some extent, simply by ordering a
2 second circuit you can generate a diverse route.

3 MR. FREIFELD: A second UNE circuit?

4 MS. FOX: Yes.

5 MR. FREIFELD: If no further UNE
6 facilities are available, could WorldCom establish
7 diversity by ordering--we have one UNE circuit, if
8 you will, one UNE route for the UNE facility, then,
9 the answer is they're not available, could WorldCom
10 create diversity by ordering facilities out of the
11 Federal tariff?

12 MS. FOX: I imagine you could.

13 MR. GANSERT: That's a little hard to
14 understand, why would there be facilities
15 available?

16 MR. FREIFELD: Because the Federal tariff
17 would provide a special construction.

18 MR. GANSERT: Okay, I see.

19 MS. FOX: But that's not to say that the
20 two circuits would be connected together by
21 Verizon.

22 MR. FREIFELD: Would you take a look at

1 Section 10.2.2 of the WorldCom proposed language
2 and tell me, given our discussion so far, if you
3 find it objectionable.

4 MS. FOX: We will not do special
5 construction for unbundled network elements.

6 MR. FREIFELD: Right. But as we
7 discussed, with the understanding that this is
8 referring to request for special construction out
9 of the Federal tariff, with that understanding or
10 clarification, is this acceptable?

11 MS. FOX: No.

12 MR. FREIFELD: And that is because...

13 MS. FOX: We don't construct for unbundled
14 network elements.

15 MR. FREIFELD: We are not asking for that.

16 MS. FOX: Any special construction, terms
17 and conditions pursuant to tariff or in tariffs. I
18 see no need to include language here for special
19 construction, if it's to relate to a tariff to
20 service. And since we won't construct unbundled
21 network elements, it's not something we could agree
22 to in a contract.

1 MR. FREIFELD: If I could paraphrase your
2 answer, are you suggesting WorldCom could order a
3 special construction out of the tariff and thereby
4 provide the diversity the other route being
5 provided as UNEs, you just don't want that
6 provision in the Interconnection Agreement?

7 MS. FOX: I'm not sure that's what I said.
8 What I said is that, first, we won't do special
9 construction for UNEs, so I don't understand its
10 place in this Interconnection Agreement.

11 If you want--if you want to order special
12 access, and if there is some special construction
13 associated with that, all terms and conditions
14 related to that particular circuit would be
15 contained in our Federal tariffs. No reason to
16 include any of that in an Interconnection
17 Agreement, and it's certainly out of place.

18 MR. FREIFELD: I understand you believe it
19 doesn't belong in the Interconnection Agreement.
20 If you could separate that thought for a moment
21 from this question.

22 WorldCom could order special construction

1 out of the Federal tariff to provide this
2 diversity?

3 MS. FOX: If you also purchased a special
4 access circuit.

5 MR. FREIFELD: Well, if we are buying a--

6 MS. FOX: And I guess I would need to
7 really understand what you meant by "diversity."
8 But if we are--because, in mediation discussions,
9 it became clear after an hour of discussion that
10 diversity also meant automatic protection
11 switching, so that if something happened to the UNE
12 circuit, Verizon would automatically switch it to a
13 special access circuit or any other circuit. And I
14 want to be clear that that's not what I'm talking
15 about. I'm talking about simply a completely
16 separate diverse circuit. Where WorldCom would
17 have the capability of doing any kind switching and
18 rearranging within its co-location arrangement, but
19 Verizon would have no obligation to do that.

20 MR. FREIFELD: I see. Thank you very
21 much.

22 That's all the questions I have.

1 MR. DYGART: So, you have none on IV-19?

2 MR. FREIFELD: That's correct. No
3 questions on the NID issue.

4 MR. DYGART: Okay. I think at this point
5 staff has a few questions.

6 First, we are going to take a quick break.
7 We will be back in five minutes.

8 (Brief recess.)

9 Whereupon,

10 CHRIS NURSE
11 was called for examination by counsel for
12 Commission and, after having been duly sworn by the
13 notary public, was examined and testified as
14 follows:

15 MR. FREIFELD: I think now is the
16 appropriate time to move the errata sheet which was
17 labeled as WorldCom Exhibit 38 yesterday related to
18 the testimony of Messrs. Lathrop, Buzacott and
19 Goldfarb.

20 ARBITRATOR ATTWOOD: Okay. Could we have
21 a copy of that.

22 MR. GARY: No objection.

1 MR. DYGART: Okay. This is entered as
2 WorldCom Exhibit 38.

3 (WorldCom Exhibit No. 38 was
4 admitted into evidence.)

5 CROSS-EXAMINATION

6 MR. GARY: Mr. Nurse, briefly, AT&T owns
7 fiber optics in Virginia, does it not?

8 MR. NURSE: I believe we answered a data
9 request on that, yes.

10 MR. GARY: AT&T does own fiber optics in
11 Virginia?

12 MR. NURSE: I said our answer to that was
13 yes.

14 MR. GARY: You also lease that fiber, in
15 part, to third parties?

16 MR. NURSE: I believe we answered that
17 question also, yes.

18 MR. GARY: Do you know whether you lease
19 that at TELRIC or market prices? It's market
20 prices, isn't it?

21 MR. NURSE: I haven't studied all the
22 various vehicles through which these facilities or

1 services are made available, so I don't have a
2 compendium of their prices.

3 MR. GARY: When you lease it, though,
4 you're probably leasing it in a market, and there
5 are other providers of fiber?

6 MR. NURSE: Well, I think the threshold
7 assumptions in your question that are problematic
8 for me. We certainly don't lease UNE dark fiber
9 because, per se, we are not an ILEC. And whether
10 or not the dark fiber or the fiber that's lit or
11 whatever is part of a service or part of a bigger
12 package, it may be priced \$10,000 for this glob of
13 20 services and elements. I don't even know
14 necessarily that there is individually identifiable
15 price for that particular element or service.

16 MR. GARY: Do you think you do that in an
17 active market in Virginia, or somehow are you a
18 unique seller?

19 MR. NURSE: No.

20 MR. GARY: No, what? No, you're not a
21 unique seller?

22 MR. NURSE: No, we are not a unique

1 seller.

2 MR. GARY: So, you are probably
3 participating in an active market in Virginia?

4 MR. NURSE: We are trying. The degree of
5 success is questionable.

6 MR. GARY: There are other providers of
7 fiber in Virginia besides AT&T?

8 MR. NURSE: Yes. I think the UNE Remand
9 Order recognizes that there are some CLECs who have
10 some fiber facilities and dismiss that because that
11 was the ILEC argument to not make it a UNE, but the
12 FCC made it a UNE in spite of the presence of some
13 CLECs for some fiber.

14 MR. GARY: Okay. Is it fair that say that
15 AT&T actively continues to construct fiber in
16 Virginia?

17 MR. NURSE: The level of activity is not
18 very high, and certainly our plant is nowhere near
19 as ubiquitous as Verizon's.

20 MR. GARY: When you obtain fiber from
21 Verizon, it's at TELRIC prices, isn't it?

22 MR. NURSE: If we obtain dark fiber UNE

1 from Verizon, it's at the TELRIC price, yes.

2 MR. GARY: It--as a general statement, is
3 it fair to say that TELRIC is generally lower than
4 market price?

5 MR. NURSE: The question doesn't make a
6 lot of sense. You haven't introduced TELRIC
7 because you are trying to unbundle a monopoly
8 network, so you didn't have competitive market
9 prices in the first place, or you wouldn't have had
10 to go through the unbundling.

11 So, you set the TELRIC prices first on a
12 surrogate of what a competitive market would have
13 generated, and you put those prices out, and that's
14 what--that's what the whole TELRIC regime has been.

15 MR. GARY: To the extent AT&T would like
16 to purchase additional fiber from Verizon Virginia
17 at TELRIC prices, I presume they would only do that
18 if that price is lower than market. Otherwise, you
19 would get it from the market.

20 MR. NURSE: No. You're assuming, first of
21 all, that the fiber is available both from Verizon
22 at TELRIC price and I don't know somebody else,

1 whether Verizon at a not TELRIC price and someone
2 else at a not TELRIC price, so that--I can't accept
3 that assumption because the FCC's rationale in
4 making dark fiber UNE in the first instance is that
5 Verizon is very often the only supplier of dark
6 fiber.

7 So, there isn't a multiple vendor market
8 where you can go in and compare prices of multiple
9 suppliers.

10 MR. GARY: If your choice is AT&T can
11 build it or Verizon can build it and lease it to
12 AT&T at TELRIC prices, would it be a correct
13 assumption that you would do whichever is cheaper
14 for AT&T?

15 MR. NURSE: Well, I don't want to be
16 argumentative, but I can't accept that Verizon
17 would build it because you said you won't build for
18 UNEs. But assuming that Verizon had dark fiber in
19 its network and it was--met all the other
20 constraints that Verizon imposes on dark fiber,
21 yes, you would compare--any competitive company
22 would do a lease-buy comparison.

1 And I think other companies would also
2 have to look at--particularly smaller companies now
3 would have to look at capital constraints. They
4 may lease it even though it might have a higher
5 life-cycle cost because they don't have the capital
6 to be able to--they can't hurdle all the necessary
7 capital to build everything, even though it might
8 be cheapest if they could obtain that capital.

9 MR. GARY: It's fair to say you are in two
10 markets. One, you are buying dark fiber at TELRIC
11 prices and leasing fiber to others in a somewhat
12 competitive market, maybe competitive market. Is
13 that a fair situation today, fair description of
14 it?

15 MR. NURSE: I think it's probably like a
16 VIN diagram. You may have little parts where the
17 two circles overlap, say in a POT-to-POT market
18 where AT&T has sort of on the ILEC side has fiber
19 that might connect Washington with New York or
20 something, may have large corporate customers on
21 both ends who would like to build a private network
22 and connect the two together. AT&T leases that

1 sort of fiber presumably to those sorts of
2 customers. That's a different market from going
3 out to a subdivision or industrial park or suburban
4 housing complex.

5 MR. GARY: No further questions for the
6 whole panel.

7 MR. DYGART: Great. Then, if we could
8 have the Verizon witnesses back up to the table.

9 QUESTIONS BY STAFF

10 MR. REEL: I would like to ask you
11 questions about dark fiber, and I would like to
12 begin with the Verizon's proposed contract to
13 WorldCom.

14 And particular, I notice at 7.2.2
15 Verizon's proposed contract language is that a CLEC
16 may access a dark fiber loop only at a preexisting
17 hard termination point, and so on and so on. We
18 talked a lot about that.

19 Now, before that, at 7.2.1, there appear
20 to be further constraints that Verizon would like
21 to put on where CLECs may interconnect. I'm not
22 sure about the relationship between 7.2.1 and

1 7.2.2.

2 MS. DETCH: Okay. 7.2.1 describes what a
3 loop is, and a loop is between a Verizon office and
4 the customer end-user premise. So, what 7.2.1 is
5 saying, to access unbundled loop dark fiber, you
6 would need co-location at the Verizon office, and
7 you would have to have a demarcation point where
8 our fiber, near where our fiber terminates in the
9 end-user premise. They have to have the mark
10 within the jumper length of 30 feet or so that
11 demark. And if they couldn't get space with the
12 landlord within that area, they would meet with us
13 to establish some type of joint demark because we
14 would probably have to get a special jumper if it
15 wasn't a standard jumper.

16 MR. REEL: I guess I'm not--I think I
17 understand Verizon's point about hard termination
18 points, but I'm not sure exactly why the
19 co-location would be necessary.

20 MS. DETCH: How would they access a UNE at
21 an office without co-location?

22 MR. REEL: I was thinking if it were in--

1 MS. DETCH: Where would they put their
2 equipment? Where would we demark the fiber to if
3 they didn't have a premise or location?

4 It could be physical, it could be virtual,
5 but they would need some form of co-location in
6 order for us to demark and install the
7 cross-connect.

8 MR. REEL: That satisfies. So, it could
9 be a virtual co-location as well as a physical
10 co-location?

11 MS. DETCH: Any kind of co-location.

12 MR. REEL: Now, at 7.2.4, I see that
13 Verizon shall perform all work necessary to install
14 a cross-connection or jumper cable.

15 MS. DETCH: Correct.

16 MR. REEL: Would you have concerns about
17 the integrity of the network if other technicians
18 were to do this work?

19 MS. DETCH: We would, but I think you
20 could probably answer on the technical reasons why.

21 MR. GANSERT: Well, I think the
22 alternative would be to have multiple people

1 working on the fiber distribution frame, and on
2 that frame are all the fiber cross-connects, and
3 any one of them could be an OC48 system. It could
4 be a very critical optical system. And they are
5 fragile. They could be broken or knocked off. Or
6 someone could make a mistake, just unscrew the
7 wrong one and knock out the Pentagon, or something.

8 MR. REEL: Thank you. Now, at the
9 proposed contract language 7.2.10 and the following
10 7.2.10.1 through 3, I noticed that in 7.2.10.1,
11 Verizon may revoke the dark fiber leased to a CLEC
12 upon a showing of need to a commission. And then
13 in 7.2.10.3, Verizon reserves and shall not waive
14 Verizon's right to claim before the Commission that
15 Verizon should not have to fulfill a CLEC order for
16 dark fiber. But I don't see a comparable reference
17 to the Commission in 7.2.10 where it says that
18 Verizon will limit the CLEC to leasing a maximum of
19 25 percent of dark fiber at any given segment.

20 So, does that mean that it's a unilateral
21 Verizon decision that's not cleared through the
22 Commission?

1 MS. DETCH: Right. This language was
2 actually developed based upon an order by the Texas
3 Commission establishing that they thought this was
4 a reasonable limitation in regards to dark fiber.
5 And the 25 percent really helps so that one
6 particular CLEC may not come in and horde a
7 particular segment of dark fiber so that other
8 CLECs or other customers couldn't come in and
9 deploy services.

10 For instance--

11 MR. REEL: I'm going to cut you off.

12 Are you suggesting that Texas Commission
13 has jurisdiction here in Virginia?

14 MS. DETCH: No, but the order actually
15 pointed to the Texas decision as establishing a
16 reasonable restriction, and we felt that it was a
17 reasonable restriction to put in.

18 MR. REEL: I believe the order says that
19 you can go before a commission, and I don't see any
20 language here about going before the commission. I
21 want to be quite crystal clear on that point, that
22 Verizon does not believe it needs to go before the

1 Virginia Commission on this point.

2 MR. GANSERT: I was going to say, just to
3 clarify the question, you're saying should there be
4 a condition that says, if this situation occurs,
5 will it be reviewed by a commission, or could there
6 be an appeal or something to a commission? Is that
7 what you're talking about?

8 MR. REEL: I'm not talking about an appeal
9 by CLEC. I'm talking about Verizon needing to go
10 to the Virginia Commission first and explain why it
11 needs to reserve the 25 percent.

12 In the same way that farther down there is
13 talk about the right to claim before the commission
14 or they may make a showing of need before the
15 commission.

16 MS. FARROBA: I think this is just a
17 simple yes or no.

18 MS. DETCH: The language.

19 MS. FARROBA: Does this mean that you do
20 not anticipate going before a commission prior to
21 making these determinations?

22 MS. DETCH: Correct.